



THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF CAMPAIGN & POLITICAL FINANCE

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MICHAEL J. SULLIVAN
DIRECTOR

April 11, 1996
AO-96-14

Ann MacFate, Director
Needham Free Public Library
1139 Highland Avenue
Needham, MA 02194

Re: Use of Library Trust Funds for Ballot Question

Dear Ms. MacFate:

This letter is in response to your February 29, 1996, letter requesting an advisory opinion regarding the use of certain library trust funds to support a proposition 2 1/2 override.

Question: May the Town of Needham Board of Library Trustees use trust funds to support a ballot question?

Answer: Yes.

Facts: According to your letter and in conversation with OCPF staff, you have stated that trust funds have been given in trust to the Needham Free Public Library ("the Library"). The Library is governed by a seven member board of trustees ("the Trustees") 2 or 3 of whom are elected annually to hold office for three years.¹ The Trustees are responsible for investing the trust funds and for using the trust funds in a manner consistent with the terms of each trust. Funds are provided to the Library by individuals, not by the Town of Needham. In some cases, the use of trust funds is restricted by the terms of a particular trust; in other cases such use is unrestricted.

¹ M.G.L. c. 78 establishes guidelines for cities and towns which establish and maintain public libraries. Section 10 of the statute provides for a board of trustees "consisting of any number of persons, male or female, divisible by three, which the town determines to elect." The Town of Needham, however, filed and the legislature enacted a home rule petition calling for a seven member board of trustees. See section 19 of Part 3 of the Needham Town Charter (Chapter 403 of the Acts of 1971 as amended). Section 11 of the statute specifies that "all money or property which [Needham] may receive by gift or bequest for said library and reading room shall be administered by the [Trustees] in accordance with the provisions of such gift or bequest."

Discussion: In Anderson v. City of Boston, 376 Mass. 178 (1978), the Supreme Judicial Court concluded that the City of Boston could not appropriate funds, or use funds previously appropriated for other purposes, to influence a ballot question submitted to the voters at a state election. In addition, the campaign finance law provides that no person or combination of persons may "in connection with any nomination or election receive money or its equivalent, expend, or disburse . . . the same, except as authorized by [chapter 55] (emphasis added)." Accordingly, this office has concluded that "governmental entities" may not expend public resources or contribute anything of value in support of or opposition to a ballot question absent express statutory authorization.²

In Anderson, however, the Court emphasized that fairness and the appearance of fairness were assured by a "prohibition against using public tax revenues to advocate a position which certain taxpayers oppose (emphasis added)." 376 Mass. at 195. The Court stated that "[t]he Commonwealth has an interest in assuring that a dissenting minority of taxpayers is not compelled to finance the expression on an election issue of views with which they disagree. Unlike the shareholders of a private corporation..., real estate taxpayers . . . cannot avoid the financial consequences of the city's appropriation of funds." 376 Mass. at 196. Similarly, this office has concluded that residential rate customers of a municipal power plant do not have a choice regarding what company or city department will provide electricity. The charges paid by customers, like taxes, are compulsory if basic services provided to residents of that city, are to be received. See AO-95-42.

As a "governmental entity" the Library is subject to the Anderson prohibition against the use of taxpayer or rate payer funds to support, oppose or otherwise influence a ballot question. Gifts to the Library which are held in trust for the Library's use are more akin, however, to contributions than to a tax or a charge since town residents are not compelled to make donations to a Library maintained trust. As a result, the use of funds voluntarily donated to the Library to influence the vote on a ballot question would not result, in the language of Anderson, in "a dissenting minority of taxpayers [being] compelled to finance the expression on an election issue of views with which they disagree." Such funds may therefore be used to support, oppose or otherwise influence a ballot question without violating the campaign finance law.²

² This opinion expresses no view on whether the terms of any particular trust do or do not authorize the use of such funds to support or oppose ballot questions generally or a particular question. In addition, we assume that no funds held in trust were solicited for the express purpose of supporting a ballot question or questions.

Ann MacFate, Director
April 11, 1996
Page 3

The Trustees must, however, file Form CPF M22A, a copy of which is enclosed, with the town clerk whenever trust funds are expended to influence a municipal ballot question. See M.G.L. c. 55, s. 22A which requires the filing of a report by a governmental unit which has "given, paid, expended or contributed . . . any money or any valuable thing in order to influence or affect the vote on" a ballot question.

This opinion has been rendered solely on the basis of representations made in your letter and solely in the context of M.G.L. c.55.

Please do not hesitate to contact this office should you have additional questions about this or any other campaign finance matter.

Sincerely,

A handwritten signature in cursive script, reading "Michael J. Sullivan".

Michael J. Sullivan
Director

Enclosure
cc: Needham Town Clerk